CIVIL WRIT JURISDICTION CASE No.3627 OF 1988

1. Shree Ram Tiwari
2. Shree Sita Ram Tiwari
3. Shree Krishna Tiwari
4. Shree Kant Tiwari
5. Rajani Kant Tiwari

All sons of Pandit Gurudeo Tiwari, resident of village Parasia, P.S. Brahmpore, District – Bhojpur (Anchal Brahmpore)

---------- Petitioners

Versus

1. The State of Bihar
2. The Consolidation Officer, Brahmpore, Bhojpur
3. The Deputy Director, Consolidation, Bhojpur
4. The Joint Director of Consolidation, Patna
5. Ram Kumar Tiwari
6. Ram Govind Tiwari

Both sons of Raj Ballam Tiwari, residents of village Parsia, P.S. Brahmpore, District – Bhojpur (Anchal Brahmpore)

---------- Respondents.

For The Petitioner : Mr. Ram Kumar Sharma, Adv.
Mr. Prabhu Narayan Sharma, Adv.
For the State : Mr. Rana Ishwar Chandra, J.C. to G.P. 13
For The Respondent No. 5 & 6 : Mr. Ras Bihari Thakur, Adv.

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P R E S E N T

THE HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

A.K. Tripathi, J. Heard learned counsel for the petitioners and learned counsel for the State.

Interlocutory Application No. 3054 of 2007 has been filed for bringing on record the legal heirs of petitioner no.4 Sri Kant Tiwari who died on 18.09.2004. The names of legal heirs have been furnished in paragraph no.1 of the Substitution Application.

Interlocutory Application is allowed. Let legal heirs be substituted in place of petitioner no. 4.

Annexure – 1 dated 15.03.1988 is the order under challenge which was passed by the Joint Director, Consolidation in Revision Case No. 3091 of 1984. The Revision was directed against the order dated 19.07.1984 passed in Consolidation case No. 449 of 1984 as well as the order dated 15.09.1984 passed by the appellate authority in appeal no. 89 of 1984. Both the courts below had rejected the claim of the respondent Ram Kumar Tiwari for a correction in the name of the records, which he said was wrongly entered in favour of petitioners of the present writ application. While exercising the power under section 35 of the Consolidation Act, the Revisional Court in its opinion came to a conclusion that there was certain error of fact and law which weighed in favour of Ram Kumar Tiwari for interference with the two orders passed by the courts below. A direction, therefore, was issued for correction as well as entry of his name in the Chakbandi records.

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Learned senior counsel appearing on behalf of the petitioners however, submits that both the findings as well as the reasoning given by the Revisional Authority is fit to be interfered with because there are not only erroneous finding

of facts contrary to the records but even the power ought not to have been exercised in such a casual manner, more so, when there is substantial evidence on record to show that the private respondents did not assert their right for many a decades while the consolidation proceedings was on over many years and various stages laid down under the Act had culminated into a final publication of the record of rights under the Consolidation Act. The court below had rightly rejected the application under section 10B on this score alone.

Attention of the Court has been drawn to the finding by the Revisional Authority on the question that the mortgage deed which was executed in favour of these petitioners or their forefather was not produced in support of the claim which was the basis for the subsequent entries in the survey records. It is categorically stated that Annexure – 2 the mortgage deed was on record and produced before the revisional authority as would be borne out from the list of documents which is Annexure – 3 and which was filed before the revisional court. Not only this on a spacious plea based on matriculation certificate produced in this regard by the private respondents, the revisional court has very casually brushed aside the authenticity of the document

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contained in Annexure – 2 by holding that there would be no occasion for Ram Kumar Tiwari to execute the mortgage deed since he was a minor.

There are other errors also with regard to non-furnishing of the generalogical table of the family of the respondent nos. 5 & 6. The statement that these petitioners took advantage of the fact that respondents did not live in the village and therefore all this was managed on their level in their absence is belied by a categorical assertion in the writ application and before Revisional Authority. Both Ram Kumar Tiwary and Ram Govind Tiwary were working as a teacher either in the village or around the village and this assertion has only been made with the object of explaining their inaction for many years in this regard.

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It is further submitted by learned senior counsel on behalf of the petitioners based on a ratio laid down in the case of ***Hari Narayan Singh and others Versus the State of Bihar and others reported in 1997 BLJ 921*** that there was no occasion for the Revisional Authority to reopen the issues after so many years especially when the respondents themselves chose 1984 for first time to file their objection under section 10(2). The final publication of the record of rights under the Act was made in the year 1979 and there

are many entries existing from before to show that the position which was being reflected in the revenue records was correct.

Learned counsel appearing on behalf of the respondents emphasizes on the fact that there is matriculation certificate furnished by his clients before the Revisional Authority which was an authentic document and that by itself establishes that Ram Kumar Tiwari was minor. By virtue of the same there was no occasion for him to execute the mortgage and once the very assertion has been brocked out there was a case for revisional authority to exercise its powers and jurisdiction to correct an error of records under section 35 of the Consolidation Act.

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In reply learned senior counsel submits that the Bihar School Examination Board certificate cannot be accepted on the face value especially for the period when it relates to because it is widely known that in those days people invariably entered lesser age in the school records to obtain benefits at a subsequent stage. Merely because the matriculation certificate has been produced on behalf of the private respondents that would not be enough to ignore all other corresponding records which have been brought on record in support of the claim of the petitioner's assertion.

Be that as it may, the court comes to a considered opinion that when the proceedings had come to an end way back in the year 1979 and all the steps were over then there was no occasion for the private respondents to appear before the consolidation authorities and make a grievance with regard to an issue which had already come to an end after due deliberation and public notices. With this position read with the ratio of the Division Bench in the case of **Hari Narayan Singh (Supra)** the Court comes to a conclusion that the revisional order passed contained in Annexure – 1 is fit to be interfered with, it is accordingly quashed.

The writ application is allowed, there will be no order as to costs.

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Patna High Court
The 24th Day of
November, 2008
NAFR/AFR
Rajeev/

(Ajay Kumar Tripathi, J.)